JD–198–98
Charleston, WV

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WALKER SIGN COMPANY

and

Cases 9–CA–35072
9–CA–35428

LOCAL UNION NO. 466, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

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for the Respondent.

DECISION

Statement of the Case

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Charleston, West Virginia on July 21 and 22, 1998. Subsequent to an extension in the filing date, briefs were filed by each party and the Respondent otherwise was allowed to file a supplemental brief on November 10, 1998. The proceeding is based upon a charge filed July 1, 1997,[1] by Local Union No. 466, International Brotherhood of Electrical Workers, AFL-CIO. The Regional Director's amended, consolidated complaint dated January 30, 1998, alleges that Respondent, Walker Sign Company of Charleston, West Virginia, violated Section 8(a)(1) and (5) of the National Labor Relations Act by making threats of futility of union activity; soliciting and encouraging decertification of the Union; bypassing the Union and dealing directly with employees; refusing to provide collective bargaining information to the Union; and, bargaining in bad faith.

Upon a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following:

[1] All following dates will be in 1997 unless otherwise indicated.

Findings of Fact

I. Jurisdiction

Respondent is engaged in the business of sign erection in the Charleston area and it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside West Virginia. It admits that at all times material is and has been an employer engaged in operations affecting commerce within the meaning of Sections 2(2)(5) and (7) of the Act and it also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

The Respondent is a family business established in 1954 by the grandfather of Scott Walker who is the company's vice president and principal operating officer. Walker has been with the company 21 years and started "on the trucks" installing and servicing signs. The Union has represented the company's installation and maintenance employees for over 30 years and both vice president Walker and his father were past members of the Union.

At all times material herein, the parties were subject to a 1996 collective-bargaining agreement (its effective dates were from July 1, 1996 through June 30, 1997), which included contributions to a Union benefit fund. The agreement also contained a clause that provides for the extension of the contract from year-to-year unless otherwise changed or terminated under Article II, Section 2 of the agreement which reads as follows:

> Either party desiring to change or terminate (the) agreement must notify the other, in writing, at least sixty (60) days prior to June 30 of any year. Whenever notice is given for changes, the nature of the changes desired must be specified in the Notice, and until a satisfactory conclusion is reached in the matter of such changes, the provisions shall remain in full force and effect.

Pursuant to the contract, the Union, in a notice dated April 30, advised Respondent of three specific proposed contractual changes as follows: that there be a 1 year agreement, that New Years Day be treated as a paid holiday and that the employees be given a $1.00 an hour wage increase. The Respondent did not invoke Article II, Section 2 of the contract and it subsequently rejected all the Union's proposals during the initial June 17 negotiation meeting. It then presented the Union with its package of proposal contractual changes and the Union responded by object to the untimeliness of the Respondent's proposals.

Following the initial June 17 bargaining session, the parties met again on June 25, June 30, July 3, July 15, September 26, November 24 (with a Federal mediator), and on a date in December. During these meetings, Respondent continued to advance its own proposals. Dispite instructions by U.S. District Court Judge Dennis Knapp to attempt to creatively solve the pending District Court litigation (in addition to bringing to a successful conclusion negotiations over modifications to the collective bargaining agreement), no agreement was reached, Walker, however, testified that the parties had agreed to a one year agreement and an additional paid holiday.

Meanwhile, in early June, prior to the first bargaining session and thereafter, a series of exchanges occurred between Walker and various employees. First, employee Jeffrey Straight testified that a few weeks before the commencement of the 1997 contract negotiations some employees asked whether Walker had come up with anything to offer them in the way of

retirement and medical insurance. Walker responded that he was "working on it" and 3 or 4 days later he walked into the shop where all of the employees were present and placed IRA pamphlets on a table and stated, "There is your retirement plan."

Employee Richard Van Wyck testified that he witnessed several contemporaneous conversations Walker had with employees regarding the IRA issue and said that when an employee asked Walker what he would do for employees if they got out of the Union, Walker said he would give them more money and check into a retirement plan fund.

Former employee Brian Sowards testified to a similar conversation in which Walker told Sowards that he would try to work up a retirement plan that would make employees' money work for them, "instead of all the money they were paying into the Union." On a second occasion, approximately 2-3 weeks before expiration of the collective bargaining agreement, Walker threw an IRA pamphlet on the table and talked about how employees' money could work better for them. Walker stated that the IRA would benefit them more than the Union retirement plan.

Former employees David Nelson testified that in June he talked to Walker about "splitting the shop" by letting younger employees get out of the Union. It was noted that by leaving the Union, employees would lose any retirement benefits and Walker talked about come up with something to replace the Union pension.

Walker, on the other hand, testified that he was walking through the shop after hours when several employees started talking about their Union retirement, said they were not happy with the Union plan and asked Walker whether he had a retirement plan. He said he did not but mentioned that his wife had an IRA that was a pretty good deal. The employees asked Walker if they could get some information regarding IRA and he said he would try to get some information from his brother in law to look over for their personal use.

Walker testified that he got some IRA brochures and placed them on a piece of equipment in the shop when no one was in the room and he denies that he laid down the brochures and said, "Here's your retirement plan," but said that when he met with the employees to hand out assignments, he indicated that he had gotten the information they wanted and said they could take a brochure home and look at it if they wanted.

Sowards testified that he understood the IRA was something the employees could do with their own money and that Walker Sign would not be getting involved in the IRA, that Walker was just providing the information to take a look at it and it was not a retirement plan with the Respondent.

David Nelson was on employee until the end of 1977 when he left for other employment. About 6 months earlier he initiated a conversation in which he asked Walker what it would take to get out of the Union and someone else asked Walker for a number to call for information about decertification. Walker put the phone number for the NLRB on a work table. Nelson did not call but admitted that when Walker asked if he had, he told Walker yes.

Walker testified that he told Nelson he could not continue to work if he quit pay Union dues (because of the contract), and that Nelson asked if he had any other options. Walker referred Nelson to the NLRB but did not have the number available and latter wrote in down and said that he gave it to him the next morning when no other employee was present. Walker said he later got a similar inquiry from employee Brian Sauers and told him that Nelson had the NLRB number that he could call (Sauers apparently did call, but used Nelson's name). Walker

also testified that on some occasions Nelson, in passing, thereafter initiated some conversation to the effect that the NLRB hadn't called him back yet.

Jeffrey Straight testified that a few days before the contract was up, he asked what Walker planned on doing and Walker said he was not going to give the Union another dime. After negotiations started, Straight approached Walker and asked if Walker would settle and get it over with if they took a cut, if they took a dollar or fifty cents and gave up vacation days. Straight testified that "if I remember correctly" Walker said "as long as we were union he would fight it." Then, in another conversation on July 10, Straight asked Walker "what it would take to settle this contract" and he testified that Walker said "one thing and one thing only. He wanted an open shop."

Walker denied that he ever made any statement to the effect that as long as the employees were union he would fight it (settling on a contract), but he was not specifically questioned about his other alleged statements.

In a letter dated September 26, union business manager James Morton requested copies of the Respondent's past year's payroll records for each bargaining unit employee and Morton informed Walker that his purpose in requesting the foregoing information was to acquire data upon which existing bargaining proposals could be revised or new proposals could be formulated. Respondent's initial response to the Union's information request was that it was not obligated to provide such information and it requested that the Union establish the relevancy of its request and specifically identify the payroll records that it was seeking and the reasons why such data was needed.

In subsequent correspondence from the Union to Respondent, the Union reiterated that its purpose in requesting employee payroll records was to facilitate movement with respect to pending contracts, however, the Respondent, in correspondence dated October 7, contended that the Union's asserted "relevancy" argument was insufficient and it further stated that the payroll information that the Union was seeking was contained in the monthly National Electrical Benefit Fund (NEBF) reports that the Union received. The Union responded on October 8 by sending a letter on the following day in which (in addition to the payroll records), it requested information pertaining to employee classifications. In a following letter on October 21 the Union, informed Respondent that the information contained in the monthly NEBF reports was not responsive to its request inasmuch as the employees' hourly pay rates and classifications could not be determined from such records. On October 23, the Respondent asserted that the Union already had the payroll information under which it could calculate hourly rates but it did enclose a list of job classifications for the eight unit employees. As noted, bargaining sessions were held in late November and December, however, no agreement was reached.

III. DISCUSSION

This proceeding arose after the Union, on April 30, exercised its rights under the parties bargaining agreement, due to expire on June 30 and proposed (1) a new 1 year agreement, (2) New Years Day as a new, paid holiday, and (3) a $1.00 an hour wage increase in all classifications. The Respondent made no timely request under the contract to change or terminate the agreement. At the first bargaining session on June 17, the Respondent announced that counsel Karen Miller would be its spokesman, that the employer rejected all of the Union's proposals and that it had 9 proposals of its own, the second of which proposal that there be a specific expiration date for the contract and the sixth proposed a wage <u>decrease</u> of $.10 an hour (it also proposed a decrease in Sunday/Holiday pay).

A. The Alleged Section 8(a)(1) Violations

The Respondent admittedly obtained some IRA information and, I credit Walker's testimony that he did so in response to a request initiated by employee Jeff Straight. I observe that although Straight's testimony was sometimes ambiguous and he had trouble remembering points, I credit his testimony that Walker said "here's your retirement plan" and I do not credit Walker's testimony that he just placed the pamphlets in the shop at a time when no one was there. Although Walker says that he indicated in casual conversation that an IRA was something an employee could do on his own and that it would not be sponsored by the company, there is other testimony by employee Van Wyck (the shop foreman), that Walker came into the shop, placed the IRA pamphlets on a table and said here is some information. Significantly, he said this occurred just after Walker had responded to an employee who asked what Walker would do for him if the employee "got out of the Union," by saying that he would "give him more money and check into a retirement plan." This testimony was not refuted by Walker and it is consistent with the testimony, also unrefutted, by employee Sauers that when he expresses a desire to not pay dues and get out of the Union if it was feasible, Walker said he would try to "work us up" a (IRA) plan that would work for us instead of paying money to the Union.

Under these circumstances I find that the totality of Walker's comments and actions went beyond the mere benign, friendly actions he portrayed. His actions were closely related to the employees' understanding of the cost of their Union dues and Walker's suggested tie in with the possibility of an independent retirement plan. Thus, even if an IRA was not directly paid for by the company it appears that it would be paid for indirectly by increases in wages (made affordable, at least in part, by the company no longer making contributions to the Union pension plan, if the employees were no longer in the Union). This direct interaction between an owner and his employees directly relates to a contractual matter and it clearly is "likely to erode the Union's position as a exclusive collective-bargaining representative," see *Rock-Tenn Co.,* 319 NLRB 1139 (1995), and *Kirby's Restaurant*, 295 NLRB 897 (1989), and I conclude that the Respondent has engaged in direct dealings in violation of Section 8(a)(1) and (5) of the Act, as alleged.

Although the Respondent attempts to emphasize the personal, friendly nature of Walker's conversations with his employees, an objective view of the Respondent's remarks, from the ranking manager of the company, shows that they were more than personal and casual, occurred during working hours and were hostile to the Union's representation during a time of contract negotiations and the consequences in these circumstances are violative of Section 8(a)(1) of the Act, see *Sage Dining Service,* 312 NLRB 845, 846 (1993).

The statements made by Respondent to employees which tie in IRA benefits with the ouster of the Union are independently violative of Section 8(a)(1) of the Act, see *Walker Manufacturing Co.,* 288 NLRB 888, 892 (1988). Moreover, these statements appear to be designed to encourage employees to procure a decertification petition. Thus, the direct dealings discussed above did not occur in isolation. During the same general time frame owner Walker also gave employee Nelson information about contacting the NLRB about decertification after Nelson (and others) expressed a concern about paying union dues. I credit Van Wyck's testimony that Walker told him that he formed a number (to call) for "deunionization" and placed it on Van Wyck's work cabinet and that later he saw and heard Walker asking other employees if they had called the number.

Although Nelson apparently initially requested the phone number, he did not call and was thereafter repeatedly asked about it until he lied and said that he had done so in order to

avoid further inquiries.

The Respondent offers no citations in support of its argument that it did not violate the Act because it merely provided information solicited by an employee and my review of the case cited by the General Counsel (no specific page number was given) does not indicate any direct holding on providing the Board's phone number in that proceeding. Otherwise, it is lawful for an employer to provide accurate information, especially in response to employees' questions, see *Lee Lumber & Building Material*, 306 NLRB 408 at 409 (1992). Here, however, Walker also gave the number to employees who did not request it and Walker took more than a casual hands-off approach to the events by constantly monitored the employees' efforts. He also went beyond the Respondent's Section 8(c) protection, see *Lee Lumber, supra,* when he tied in his encouragement of decertification and the implied promise of benefits (more pay and an independent retirement fund in exchange for no union or union dues), with the innocuous provision of the NLRB phone number.

Under these circumstances, I find that the Respondent conveyance of information relating to decertification and the Board's phone number was not free of promises of benefits, see *Architectural Woodwork Corp.*, 280 NLRB 930 at 933 (1996), and, therefore, I conclude that its total conduct constituted prohibited encouragement and solicitation of employees to decertify the Union in violation of Section 8(a)(1) of the Act, as alleged.

I find that employee Jeff Straight's straight forward testimony that a few days before the contract was up, he asked what Walker planned on doing and Walker said he was not going to give the Union another dime was highly credible as was his testimony that after negotiations started, Straight approached Walker and asked if Walker would settle and Walker said "as long as we were union he would fight it." In another conversation on July 10, Straight asked Walker "what it would take to settle this contract" and Walker said "one thing and one thing only. He wanted an open shop."

Walker's three comments were made just before and after negotiations started and at the same time Walker was suggesting he would offer more pay (for an individual retirement fund) if the employees were non union and also was encouraging the employees to pursue decertification of the Union. The statements clearly sent a message to the employees that Walker would not reach agreement unless they were no longer a Union shop and therefore implies that their continued support of the Union would be futile. The Respondent's comments are coercive in nature and interfere with and restrain the employees exercise of their Section 7 rights and, accordingly, I conclude that the General Counsel has shown a violation of Section 8(a)(1) of the Act as alleged, see *Skrl Die Casting, Inc.*, 245 NLRB 1041, 1047 (1979).

B. Alleged Bad Faith Bargaining

The parties had a history of collective bargaining, and the Union had represented the Respondent's production and maintenance employees for many years. The most recent collective-bargaining agreement was in effect until June 30 and would have been extended on a year to year basis if no other actions were taken. Joe Samples, assistant business manager of Local Union 466, testified that at the parties first meeting held on June 17, at the local union hall, the Respondent rejected the Union's proposals and handed the Union a list of its own proposals for modification of the contract, as follows: 1. Deletion of the Union security provisions of the contract; 2. Deletion of the automatic renewal of the contract absent affirmative termination by a party; 3. Deletion of the provision permitting the Union to render assistance to other Unions on a job; 4. Reduction of overtime pay; 5. Reduction of hourly wages; 6. Deletion a pay for "waiting time;" 7. Deletion of the eight hour work day; and, 8.

Deletion of the provision permitting the Union access to the employer's shop and to inspect information necessary for contract enforcement.

At the next meeting, on June 25, the Union business agents were accompanied by Union attorney, Carl Hostler. Hostler began the meeting by stating that the Union was not waiving its position that the Respondent's proposals were untimely and then offered the following package proposal: a two year agreement; paid holiday for New Year's Day; and a $.75 raise each year of the agreement. The Respondent rejected that proposal, and advanced a package proposal of its own: including a one year agreement and deletion of the Article II, Section 2 requirement that the 60 day notice of desired changes include notice of the specific nature of desired changes, in addition to all of the Respondent's June 17 proposals. Hostler asked why the Employer was seeking a $.10 decrease but the Respondent declined to give reasons or discuss the proposal and stated it was, "just an Employer's proposal." No tentative agreements were reached.

The parties met on June 30 at the offices of Respondent's counsel. The Union submitted the following package proposal: one year agreement, paid New Year's Holiday, and a $.70 per hour raise. The Respondent again rejected the Union's proposal and presented its same package proposal with the exception of the withdrawal of its previous proposals to delete the union access and show-up pay provisions. No tentative agreements were reached.

The July 3 meeting was held at the Union hall. Hostler asked why the Employer had proposed a wage decrease if it was not a matter of financial status or workmanship. Counsel Miller then handed the Union representatives photographs of some of the Respondent's vehicles which had trash in them, and stated that wages should be cut because the employees are unprofessional, and that their workmanship is terrible. Morton then asked Walker several questions about the assertions he made regarding the employees' workmanship and professionalism but Miller directed Walker not to answer any of the Union's questions. The Union asked for a caucus but Miller demanded counter proposals, refused to permit the Union to caucus, and directed that the Union call her when they were "ready." No tentative agreements were reached.

On July 1, the Union filed a grievance over the Employer's submission of untimely contract proposals and insistence upon bargaining over them but the parties again met for negotiations on July 15. The Union said that it was not waiving its position as to the untimeliness of the Employer's proposals, then proposed a one year agreement, $.60 per hour raise with retroactive back pay to July 1, 1997, New Year's Day as a paid holiday, and two hours show up pay instead of the existing eight hours. The Employer asked for a caucus, and made the following package proposal upon its return: one year agreement, deletion of Article I, Section II and Article II, Section I, deletion of Article III, Section V, two hours' show up pay instead of eight hours, and a decrease in wages of $.10 per hour. The Union caucused and advised the Employer it would consider its proposals and contact them to set a meeting date. No tentative agreements were reached.

On September 26, the parties met at the offices of the Union's counsel. Charles F. Donnelly was present as counsel to the Union and stated that he intended to limit negotiations to the substance of the Union's timely submitted proposals. The Union then submitted Union's Revised Proposal #1 to the Employer, which provided for a 3-year agreement. Counsel for the Employer responded that the proposal was "ridiculous" and stated that the employees wanted out of the Union. Miller then presented the Union with a proposal for a 6-month agreement, then changed it to a 3-month agreement. Donnelly responded that whether or not the employees wanted out of the Union was not an appropriate topic of discussion for the

negotiations. Mark Weiler, co-counsel for the Employer then announced that the Employer, wanted an open shop and said that if it didn't get it this year, it would get it next year.

The Union next presented Union's Revised Proposal #2 which provided for a paid holiday on either New Year's Day or Veteran's Day. Miller responded that the Company would accept Union's Revised Proposal #2 if the contract expired in June, 1998. Donnelly asked why its counter proposal tied into acceptance of the Union's proposal to duration of the agreement (which would have been less than a year had the Union accepted the Employer's proposal) but the Employer gave no response. Donnelly then next asked whether the Employer would be willing to accept both New Year's Day and Veteran's Day as paid holidays. The Employer's representatives then stated that if the Union did not have anything better than this, they were leaving, and then abruptly terminated the meeting. No tentative agreements were reached.

Following the filing of a court action and at the suggestion of District Court Judge Dennis Knapp, the parties were joined by a mediator from the Federal Mediation and Conciliation Service for a November 24 meeting in which an attempt was made to settle the litigation between them as well as to negotiate the collective bargaining agreement. The Union, represented by counsel Molly Wade, who replaced counsel Donnelly (they are from the same firm), responded to a comment by Respondent's counsel Weiler that the Union need to state what issues are on the table replied; length of a agreement, additional paid holiday, and wage increase. Respondent asserted that a 1-year agreement had been agreed upon and that it would not agree to or discuss making a bargaining agreement retroactive to July 1, 1997. The Union advanced a package proposal of a 5-year agreement, additional paid holiday, and a wage increase of $.60 with backpay retroactive to July 1, 1997. The Company responded with a package proposal of an additional paid holiday and withdrawal of its proposed $.10 per hour pay cut, contingent upon the contract expiring on June 30, 1998 (which would have resulted in a contract duration of less than a year). The Union rejected that proposal but suggested a date 2 years from ratification, a paid holiday and $.60 an hour. Wade asked if the Respondent would discuss a health care plan as a compromise to proposals and said that the Union would add the 2 hour call in verses the current 8 hour to their package. No agreements were reached and the Respondent questioned which employees were on the Union's committee and why they were not there but it was agreed to meet again on December 5.

The final meeting (also attended by the mediator), took place in December. No formal proposals were exchanged by the parties however, the Union did submit for purposes of discussion a sample health care plan.

The Board, in *Reichhold Chemicals,* 288 NLRB 69 (1988) reviewed and endorsed the summary of legal principles set forth in *Atlanta Hilton & Tower,* 271 NLRB 1600 (1984). This Decision held, in part:

> It is necessary to scrutinize an employer's overall conduct to determine whether it has bargained in good faith. "From the context of an employer's total conduct, it must be decided whether the employer is lawfully engaging in hard bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement." A party is entitled to stand firm on a position if he reasonably believes that it is fair and proper or that he was sufficient bargaining strength to force the other party to agree. (citation omitted)

It also is well established that as part of its duty to bargain in good faith, an employer must comply with a union's request for information that will assist the union in fulfilling its

responsibilities as the employees' statutory representative *NLRB v. Acme Industrial Company*, 385 U.S. 432 (1967); *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979), including information relevant to both contract administration and contract negotiation, *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). The standard applied in determining relevancy in these circumstances requires that the information have some bearing on the issue for which the information is requested and be of probable or potential relevance to the Union's duties. *Pfizer, Inc.,* 268 NLRB 916, 918 (1984).

On several occasions during negotiations the Union requested relevant information that the Respondent produced only after untimely delay or petty argument, and, accordingly, I find that the Respondent is shown to have failed at all times to fully satisfy its obligation to bargain in good faith by timely satisfaction of the Union's information requests and, accordingly, I conclude that the Respondent is shown to have violated Section 8(a)(1) and (5) of the Act in this respect, as alleged.

Here, the Respondent's owner engaged in personal conversations with some employees who expressed their annoyance at having to pay Union dues. This apparently triggered a decision to strongly oppose the Union's three proposal contract changes advanced by the Union in accordance with the Article II, Section 2 contract reopener provision. It also apparently led to the Respondent's decision to respond after June 30 with its own package of nine basically regressive proposals, proposals that were untimely under Article II, Section 2 of the contract and proposals that provided for a reduction in wages and the deletion of the Union security provision and which were dissimilar to the specific bargaining subjects advanced by the Union.

Meanwhile, the Respondent's principal owner engaged in several illegal practices discussed above, practices that were related to his expressed desire to have an open shop. Clearly, the mere express of dissatisfaction with paying union dues by some employees does not provide any valid basis for the Respondent to withdraw recognition from the Union nor does it provide any justification for a failure to bargain in good faith. Initially, the Respondent did not express a reason for its proposed 10 cent an hour wage reduction. It never exercised any managerial authority regarding vague problems with the employees job performances. It did not warn or discipline any employee in this regard and despite a specific question by the Union in the second negotiating session, no workmanship problems were mentioned (it was explained only as "just an Employer's proposal"). Then, during the third negotiating session, the Respondent's suddenly responded with a generalized claim of unprofessional and untidy habits. In this respect I find that Walker's photographs appear to have been "staged" and that his other claims are unpersuasive, especially in view of his failure to take any supervisory action and his own inconsistent testimony that he had a work force of friends who he considered to be good employees.

As pointed out by the Charging Party, the Respondent made statements to the effect that any increase in wages would be tied into an open shop or their decertification of the Union. Thus, the Respondent's proposal to reduce wages can be an indicia of bad faith see *Hedaya Bros.*, 277 NLRB 942, 960 (1985). Moreover, the pretextual nature of the Respondent's reasons for its wage proposal also contributes to the totality of the Respondent's conduct and again indicate that it was not bargaining in good faith. The Respondent's decision to rely on its lawyer's "strategy" (see the testimony of former employee David Clark at page 60 of the transcript), and its apparent decision to turn over all negotiations to its lawyers, does not shield it from the consequence of its actions.

The Union made a timely objection to the untimeliness of the Respondent's proposals

and it consistently repeated this objection throughout the negotiation process. There is a presumption that unions do not abandon rights guaranteed under the Act, *A-1 Fire Protection Inc.,* 250 NLRB 217, 219 (1980), and for the Board to find a waiver it must be clear and unmistakable, *Tocco Division of Park-Ohio Industries*, 257 NLRB 413, 414 (1981). Here, the mere fact that the Union discussed other proposals during negotiations and the fact that it advanced another proposal of its own in response to a District Court Judge's suggestion that the parties be creative in resolving their differences, does not constitute waiver and the Union otherwise clearly retained a valid objection to the matter of what constituted proper subjects for bargaining.

Here, I find that under the terms of the contract the only mandatory subjects of bargaining where the three subjects timely raised by the Union, namely a pay increase, the addition of a paid holiday, and the length of the agreement. While the Respondent properly could reject a proposed increase and agree only to the status quo, the pay decrease proposed by the Respondent is not the same subject as a pay increase and here, the Respondent's proposal in this respect is not only an indicia of bad faith, as found above, it also is not a mandatory subject of bargaining under the circumstance of this proceeding.

The process of bargaining on the three mandatory subjects properly can involve consideration of alternative, quid pro quo, suggestions by either side, however, the Respondent had no right to insist on consideration and bargaining about its untimely and therefore non-mandatory bargaining proposals. In other words, if the Respondent wanted to pursue proposals outside the scope of the Union's timely advanced proposals it had to do so in accordance with Article 11, Section 2 and, as the Respondent failed to make any timely proposals under the contract that would have required the Union to bargain, the Union was entitled to the automatic renewal of the contract as to those matters.

The Respondent's conduct, as discussed above, is not offset by its asserted agreement on the length of the contract at one time or by the fact that it met and talked with the Union and that no impasse was reached. The Respondent's bad faith is clearly established by its introduction of non mandatory proposals and its instance upon bargaining about these subjects, proposals that effectively frustrate the collective bargaining process and the provisions of the parties existing collective bargaining agreement, by the other related bad faith indicia noted above and by it contemporaneous participation in other violations of Section 8(a)(1) of the Act, also noted above. Under these circumstances, I conclude that the General Counsel has shown that the Respondent's overall conduct warrants the conclusion that it has bargained in bad faith in violation of Section 8(a)(1) and (5) of the Act, as alleged.

IV. Conclusions of Law

1. Respondent is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By directly providing unit employees with information about a retirement plan the Respondent has engaged in direct dealing which interferes with the Union's position as exclusive collective bargaining representative in violation of Section 8(a)(1) and (5) of the Act.

4. By encouraging employees to decertify the Union while impliedly offering a promise of benefits, and by implying that support of the Union would be futile because it would not reach an agreement while there was a Union shop, the Respondent has interfered with, restrained

and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

5. By refusing to timely furnish the Union with information requested relevant to the Union's collective bargaining duties, the Respondent failed to bargain collectively with the Union and engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

6. By introducing untimely proposals that are effectively non mandatory subjects and insisting upon bargaining upon such proposals with an intent to frustrate the bargaining process until the Union was decertified and otherwise refusing to bargain collectively with the Union in good faith, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

V. The Remedy

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

Otherwise, it is not considered necessary that a broad order be issued.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[2]

ORDER

Respondent, Walker Sign Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act by impliedly offering a promise of benefits and encouraging employees to decertify the Union and by implying that the employees' support of the Union is futile because it will not agree to a contract while there is a Union shop.

(b) Bypassing the Union and directly dealing with employees about retirement plans or benefits.

(c) Failing and refusing to timely provide requested information relevant to the Union's collective bargaining duties.

(d) Introducing untimely bargaining proposals and insisting on bargaining of non mandatory proposals and otherwise failing and refusing to bargain in good faith collectively with the Union.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, make timely responses of information requested by the Union, and on request bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate unit of its employees with respect to their wages, hours and other terms and conditions of employment and embody any understanding reached in a signed agreement.

(b) Within 14 days after service by the Region, post at its facilities in Charleston, West Virginia, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 9, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

Dated, Washington, D.C. November 30, 1998.

_____
Richard H. Beddow, Jr.
Administrative Law Judge

JD–198–98
Charleston, WV

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT Interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed them by Section 7 of the Act by impliedly offering a promise of benefits and encourage employees to decertify the Union and by implying that the employees' support of the Union is futile because it will not agree to a contract while there is a Union shop.

WE WILL NOT bypass the Union and directly deal with employees about retirement plans or benefits.

WE WILL NOT fail and refuse to timely provide requested information relevant to the Union's collective bargaining duties.

WE WILL NOT introduce untimely bargaining proposals and insist on bargaining of non-mandatory proposals and otherwise fail and refuse to bargain in good faith collectively with the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request, make timely responses to information requested by the Union, and on request bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate unit of its employees with respect to their wages, hours and other terms and conditions of employment and embody any understanding reached in a sign agreement.

WALKER SIGN COMPANY

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271, Telephone 513–684–3663.